

### **REMARKS**

Claims 1-11 have been amended to remove multiple dependencies and to add clarity to the claim language. New claim 12 has been added. The amendments and new claim are supported by the specification and claims as originally filed. For example, the amendments to claim 1 are supported at least by the specification at page 6, first full paragraph, and at page 13, top of page through last full paragraph. Support for new claim 12 can be found, for example, in the specification at page 7, second full paragraph and page 15, last full paragraph to page 17, first full paragraph. Accordingly, no new matter has been added.

#### **Claim Objections**

The Examiner has objected to Claims 4-11 as being multiple dependent claims depending from other multiple dependent claims. In response, Applicant has amended claims 3-8 and 10-11 to make each claim refer back to one independent or dependent claim. Accordingly, Applicant submits that multiple dependencies have been removed, and respectfully requests that the objection be withdrawn.

#### **Double Patenting**

The Examiner has provisionally rejected claims 1 and 3 on the ground of nonstatutory obviousness-type double patenting. Specifically, the Examiner asserts that claims 1-3 are allegedly anticipated by claims 1 and 5 of copending U.S. Application 12/682,747.

Applicant submits that, as amended, none of claims 1-3 are unpatentable over the above-cited references. However, if necessary, Applicant will consider filing a terminal disclaimer after one or more copending claims are found allowable.

#### **Rejection of claims 1-3 under 35 U.S.C. § 112, second paragraph**

The Examiner has rejected claims 1-3 under 35 U.S.C. § 112, second paragraph, as being allegedly indefinite. Each of the rejected terms is discussed below.

First, the Examiner states that the term "granular" is not clear. In response, Applicant has amended claims 1-11 to delete the term "granular." Further, claim 1 has been amended to recite a drink "comprising aggregated jelly granules." As pointed out in the telephonic interview,

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Applicant notes that the Specification at page 13 describes the size and shape of the aggregated jelly granules. Accordingly, Applicant submits that the rejection with regard to the term “granular” has been overcome.

Second, the Examiner states that it is unclear whether the composition must be a jelly or merely jellylike. In response, Applicant has amended claim 1 to delete the term “jellylike” and to recite “jelly drink.” Accordingly, Applicant submits that the rejection with regard to the term “jellylike” has been overcome.

Third, the Examiner asserts that the elements required for the “bitterness masking component” are unclear. Specifically, the Examiner states that it is unclear if only one of the elements from the list of vegetable fat, vegetable oil, animal fat and animal oil need to be present or if both a fat and oil from the same source must be present in order for this limitation to be met. In response, Applicant has amended claim 1 to recite “at least one of a vegetable fat, vegetable oil, animal fat and animal oil.” Accordingly, Applicant submits that the rejection with regard to the term elements required for the “bitterness masking component” has been overcome.

In accordance with the above, Applicant submits that the claims particularly point out and distinctly claim the subject matter of the invention. Applicant respectfully requests withdrawal of the rejections under 35 U.S.C. § 112, second paragraph.

**Rejection of Claim 1 under 35 U.S.C. § 103(a)**

The Examiner has rejected claim 1 under 35 U.S.C. § 103(a), as allegedly obvious over Nakagami et al. (WO 00/54811, hereinafter “Nakagami”) in view of Fukui et al. (U.S. Patent No. 6,277,395, hereinafter “Fukui”). Specifically, the Examiner alleges that Nakagami discloses granular pharmaceutical compositions that mask the disagreeable taste of the drug. The Examiner acknowledges that Nakagami fails to disclose a jelly drink containing at least one gelatinizing component. However, the Examiner asserts that such features are taught by Fukui. The Examiner concludes that it would have been obvious to one of ordinary skill in the art to utilize the taste masked granules of Nakagami in combination with the jelly drink allegedly taught by Fukui.

Applicant notes that the present technology relates to a jelly drink that facilitates taking a bitter drug and/or supplement. Specification at Abstract. The specification states that the

“beverage is an aggregation substance of granular jelly.” Specification at page 13, second full paragraph. Thus, the claimed jelly comprises aggregated jelly granules which, because of the bitterness-masking component in the granules, provide the effect of masking bitterness when taken together with a bitter medicine and/or dietary supplement. The granular nature of the jelly is especially suited for taking bitter medicines because the aggregated jelly granules are able to wrap around the medicine to facilitate swallowing and to mask the bitterness and smell of the medicine. Specification at page 15, last full paragraph through page 16, first full paragraph. Accordingly, Applicants submit that the instant claims are not obvious for the following reasons.

**The prior art references, either alone or when combined, fail to teach or suggest all of the elements of independent claim 1.**

The law dictates that in order to establish a *prima facie* case of obviousness, among other things, the prior art must teach or suggest all the claim limitations. (M.P.E.P. § 2143).

Nakagami and Fukui, either alone or when combined, fail to teach or suggest all of the elements of independent claim 1, or any of the claims dependent thereon. Specifically, neither Nakagami nor Fukui teach or suggest a jelly drink “comprising aggregated jelly granules,” as recited in amended claim 1.

First, Nakagami fails to disclose aggregated jelly granules. Nakagami relates to pharmaceutical compositions comprising wax granules with a bitter drug dispersed therein. *See* Nakagami at paragraph [0061]. In contrast, amended claim 1 recites a jelly drink “comprising aggregated jelly granules.” Because Nakagami teaches a drug dispersed uniformly within wax particles, Nakagami fails to teach aggregated jelly granules. Accordingly, Nakagami fails to teach, suggest, or in any way make obvious each of the elements of amended claim 1.

Fukui fails to remedy this deficiency. Fukui is related to a swallowing-assistive drink. *See* Fukui at Abstract. However, Fukui fails to teach aggregated jelly granules. Specifically, Fukui teaches a drink comprising a mixture of water and an adhesive paste that takes forms of viscous liquid or gelatinoid at room temperature. *See* Fukui at column 3, lines 40-43. In contrast, amended claim 1 recites a jelly drink “comprising aggregated jelly granules.” Because Fukui fails to teach aggregated jelly granules, Fukui fails to teach, suggest, or in any way make obvious each of the elements of amended claim 1. Accordingly, even when combined, none of

the cited references, alone or combined, teaches all of the elements of the claimed subject matter, including a jelly drink “comprising aggregated jelly granules,” as recited in amended claim 1. Because the cited references fail to teach each and every element of claim 1, a *prima facie* case of obviousness has not been established.

In light of the foregoing, Applicant submits that amended claim 1 is not obvious under 35 U.S.C. § 103(a). Applicant respectfully requests withdrawal of this rejection and allowance of the pending claims.

**Rejection of Claims 1 and 2 under 35 U.S.C. § 103(a)**

The Examiner has rejected claims 1 and 2 under 35 U.S.C. § 103(a), as allegedly obvious over Nakagami in view of Fukui, and further in view of Sugao et al. (J. Pharm. Sci, 1998, 87:96-100, hereinafter “Sugao”). Specifically, the Examiner alleges that Nakagami in combination with Fukui disclose granular compositions that mask the disagreeable taste of the drug. The Examiner acknowledges that neither Nakagami nor Fukui disclose a hydrofuge inhibition component listed in claim 2 such as fatty acid glycerin esters and fatty acid sucrose esters. However, the Examiner asserts that such features are taught by Sagao. The Examiner concludes that it would have been obvious to one of ordinary skill in the art to utilize the taste masked granules of Nakagami in combination with the sucrose fatty acid ester allegedly taught by Sagao. Applicant respectfully disagrees.

The law dictates that in order to establish a *prima facie* case of obviousness, among other things, the prior art must teach or suggest all the claim limitations. (M.P.E.P. § 2143).

As noted above, Nakagami and Fukui, either alone or when combined, fail to teach or suggest all of the elements of independent claim 1, or any of the claims dependent thereon. Specifically, neither Nakagami nor Fukui teach or suggest a jelly drink “comprising aggregated jelly granules,” as recited in amended claim 1.

Sagao fails to remedy this deficiency. Sagao is related to wax-coated microparticles. *See* Sagao at Abstract. However, Sagao fails to teach aggregated jelly granules. Specifically, Sagao teaches microparticles coated with wax that are administered to humans in powder form. *See* Sagao at page 100. In contrast, amended claim 1 recites a jelly drink “comprising aggregated jelly granules.” Because Sagao fails to teach aggregated jelly granules, Sagao fails to teach,

suggest, or in any way make obvious each of the elements of amended claim 1. Accordingly, even when combined, none of the cited references, alone or combined, teaches all of the elements of the claimed subject matter, including a jelly drink “comprising aggregated jelly granules,” as recited in amended claim 1. Because the cited references fail to teach each and every element of claim 1, a *prima facie* case of obviousness has not been established. Additionally, because each of claims 2-12 depends directly from claim 1, none of these dependent claims are obvious in view of the cited references.

In light of the foregoing, Applicant submits that claims 1-2 are not obvious under 35 U.S.C. § 103(a). Applicant respectfully requests withdrawal of this rejection and allowance of the pending claims.

**Rejection of Claims 1 and 3 under 35 U.S.C. § 103(a)**

The Examiner has rejected claims 1 and 3 under 35 U.S.C. § 103(a), as allegedly obvious over Nakagami in view of Fukui, and further in view of Nakamura et al. (WO 01/66083, hereinafter “Nakamura”). Specifically, the Examiner alleges that Nakagami in combination with Fukui disclose granular compositions that mask the disagreeable taste of the drug. The Examiner acknowledges that neither Nakagami nor Fukui disclose a specific pH range for the composition. However, the Examiner asserts that such features are taught by Nakamura. The Examiner concludes that it would have been obvious to one of ordinary skill in the art to utilize the taste masked granules of Nakagami in combination with the pH range allegedly taught by Nakamura. Applicant respectfully disagrees.

The law dictates that in order to establish a *prima facie* case of obviousness, among other things, the prior art must teach or suggest all the claim limitations. (M.P.E.P. § 2143).

As noted above, Nakagami and Fukui, either alone or when combined, fail to teach or suggest all of the elements of independent claim 1, or any of the claims dependent thereon. Specifically, neither Nakagami nor Fukui teach or suggest a jelly drink “comprising aggregated jelly granules,” as recited in amended claim 1.

Nakamura fails to remedy this deficiency. Nakamura is related to oral gel preparations. *See* Nakamura at page 1, “Technical Field.” However, Nakamura fails to teach aggregated jelly granules. In contrast, amended claim 1 recites a jelly drink “comprising aggregated jelly

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granules.” Because Nakamura fails to teach aggregated jelly granules, Nakamura fails to teach, suggest, or in any way make obvious each of the elements of amended claim 1. Accordingly, even when combined, none of the cited references, alone or combined, teaches all of the elements of the claimed subject matter, including a jelly drink “comprising aggregated jelly granules,” as recited in amended claim 1. Because the cited references fail to teach each and every element of claim 1, a *prima facie* case of obviousness has not been established. Additionally, because each of claims 2-12 depends directly from claim 1, none of these dependent claims are obvious in view of the cited references.

In light of the foregoing, Applicant submits that claims 1 and 3 are not obvious under 35 U.S.C. § 103(a). Applicant respectfully requests withdrawal of this rejection and allowance of the pending claims.

*No Disclaimers or Disavowals*

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, Applicant is not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. Applicant reserves the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that Applicant has made any disclaimers or disavowals of any subject matter supported by the present application.

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Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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